A TREATISE ON THE LAW OF IRRIGATION. Second Edition. By Joseph R. Long. The W. H. Courtright Publishing Company, Denver, Colorado. 1916. pp. xiii, 626.

The author states in the preface that "It would have been an easy matter to expand the work into two volumes, but my purpose has been to present the law in compact form and in logical order, with a view to the convenience of the busy practitioner" . . . and rather . . . "as a book of principles than a digest of decisions and statutes." The treatise is about one-half the thickness of the average law text book and in this respect bears out the author's statement.

The author does not consider that a presentation of the historical development of irrigation in other parts of the world is appropriately included in a legal work of this character, evidently having in mind a monumental treatise on the law of irrigation which appeared not many years ago.

The work is confined as far as possible to the law of irrigation and, as a consequence, cases involving water rights of a different nature are only examined and cited where "necessary to a complete understanding of the doctrine as applied to the law of irrigation." It is to be regretted that the author did not cover the entire field of water rights, for the treatment of the imporant branch of the law governing irrigation is so indissolubly associated with most of the problems arising in the general field of water law that the two are nearly co-extensive.

Typographically the book is not perfect and the author frequently refers to "recent" decisions which were rendered many years ago. The citation of authorities is not as up to date as one would be led to expect from the date of publication of the work.

The author takes the view that though most of the authorities hold that water after it has been diverted from the natural source and has been collected in ditches, pipes, and reservoirs is personal property,[1] yet "as applied to the use of water for irrigation, this is not a correct statement of the law." He prefers to adopt as "absolutely sound" the view recently expressed by the Supreme Court of California that water until severed from the realty remains part of the land, and that as long as it remains in pipes which "themselves are fixtures and part of the realty," this severance does not take place until "the water is taken from the pipes by the consumer." When the water is conducted through pipes or ditches and used for irrigation, it permeates the soil and remains a part of the realty for "the severance does not take

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[1] Wiel, Water Rights, (3rd ed.), § 35; Kinney, Irrigation, (2nd ed.) § 774; Farnham, Waters and Water Rights, §§ 158, 169; Long, Irrigation (1st ed.) § 72; Gould, Waters, (3rd ed.) § 236; 40 Cyc. 552; 1 California Law Review, pp. 484-6.

place at all."[2] It is difficult to see why the mere use of water for irrigation should result in its having a different status as property from that of water devoted to other uses when confined in similar artificial conduits.

The author also takes the view that the riparian right is not necessarily "inseparably" annexed to the soil since "the right may be acquired as against the riparian proprietor by another person by grant or adverse user, etc."[3] It would seem, however, that what the grantee or adverse user acquires under such circumstances is not the riparian right, strictly speaking, for as against the remaining riparian owners such grantees have no riparian status, but that a new and entirely distinct right to the flow of the water involved arises and the original riparian owner is merely voluntarily or involuntarily, as the case may be, placed in a position where he cannot personally object to the use of the water by the new claimant. He is estopped from denying the grant and has extinguished his own right as against his grantee.[4] In this sense, the riparian right may be "severed from the land" but it is not, technically at least, acquired by another party. The grantee thereafter holds under a title of a different character and it ceases to be a riparian right.[5]

It will be recalled that Professor Long was one of the first text writers to formulate and discuss the Colorado, California and Wyoming systems of water law as such, and in this respect he was a pioneer.[6] The second edition of this work gives evidence of careful and independent inquiry into fundamental principles, even if we may not agree with all of the author's conclusions.

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[2] Copeland v. Fairview Land & Water Co. (1913), 165 Cal. 148, 131 Pac. 119; Stanislaus Water Co. v. Bachman (1908), 152 Cal. 716, 93 Pac. 859.

[3] Long on Irrigation (2nd ed.) § 34.

[4] Wiel on Water Rights (3rd ed.) § 713. California Pastoral, etc. Co. v. Madera, etc. Co. (1914), 167 Cal. 78, 86, 138 Pac. 718.

[5] Bearing on this point it is interesting to note that in a case where a tract of land, originally a part of a riparian tract, was conveyed so that the conveyed parcel no longer bordered on the stream, although a reservation of the riparian right was contained in the conveyance, Judge Welch of the Superior Court of Santa Clara County held "such tracts not bordering on the stream do not retain their water rights as riparian rights but rather by virtue of covenants in deeds" and as a result such reservations are not effective as against third parties who are riparian owners. (Hoover v. Herbert, Feb. 1, 1918). The Supreme Court of California, without deciding the point, has already intimated that this might be the law. Copeland v. Fairview Co. supra, n. 4. Professor Long thoroughly believes in the converse of this rule, viz., that where a non-riparian tract is added to a riparian tract the former acquires a riparian character by virtue of such unity of ownership. Long on Irrigation, 2nd ed. § 52.

[6] Long on Irrigation, (1st ed.) §§ 6, 99-107.